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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ANDRE D. CITIZEN,

12 Plaintiff,

13 v.
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15 COUNTY OF SAN BERNARDINO,
16 et al.,

17 Defendants.
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Case No. 5:22-cv-00666-CJC-JC

MEMORANDUM OPINION AND
ORDER DISMISSING ACTION

19 **I. BACKGROUND AND SUMMARY**

20 On May 23, 2022, plaintiff Andre D. Citizen, a pretrial detainee who is
21 proceeding *pro se* and has been granted leave to proceed without prepayment of the
22 filing fee (“IFP”), filed a Civil Rights Complaint (“Complaint” or “Comp.”)
23 pursuant to 42 U.S.C. § 1983 against the County of San Bernardino (the “County”),
24 Superior Court Judge Dwight W. Moore, Deputy District Attorney Kathleen Fultz,
25 Captain Victor Moreno of the County Sheriff’s Department, and County Chief
26 Executive Officer Leonard Hernandez. (Docket No. 5 at 1, 3-4).¹

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28 ¹Plaintiff initially filed the Complaint on April 14, 2022 (Docket No. 1), but that version
was missing several pages, so the Court ordered him to submit a complete copy (Docket No. 4),
(continued...)

As plaintiff is a pretrial detainee and is proceeding IFP, the assigned Magistrate Judge screened the Complaint to determine if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A; 42 U.S.C. § 1997e(c).

On June 30, 2022, the Magistrate Judge issued an Order Dismissing Complaint with Leave to Amend and Directing Plaintiff to Respond to Order (“June Order”).² (Docket No. 10). The June Order advised plaintiff that the Complaint was deficient for reasons described in the June Order, dismissed the Complaint with leave to amend, and directed plaintiff, within twenty days (*i.e.*, by July 20, 2022), to file one of the following: (1) a first amended complaint which cures the pleading defects described in the June Order; (1) a notice of dismissal; or (3) a notice of

¹(...continued)
which he filed on May 23, 2022 (Docket No. 5).

²Absent consent by all parties, including unserved defendants, a magistrate judge cannot issue dispositive orders, including an order dismissing a claim. Branch v. Umphenour, 936 F.3d 994, 1004 (9th Cir. 2019); see also Williams v. King, 875 F.3d 500, 504 (9th Cir. 2017) (“[C]onsent of all parties (including unserved defendants) is a prerequisite to a magistrate judge’s jurisdiction to enter dispositive decisions under § 636(c)(1).”); 28 U.S.C. § 636(b)(1)(A)-(B). However, “the dismissal of a complaint with leave to amend is a non-dispositive matter.” McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991). Accordingly, a magistrate judge may dismiss a complaint with leave to amend without the approval of a district judge. See id. at 797. Additionally, a plaintiff who disagrees with a magistrate judge’s order, including a nondispositive order dismissing a pleading with leave to amend, may file an objection with the district judge. See Bastidas v. Chappell, 791 F.3d 1155, 1162 (9th Cir. 2015); see also Hunt v. Pliler, 384 F.3d 1118, 1124 (9th Cir. 2004) (“District court review of even these nondispositive matters . . . can be compelled upon objection of the party against whom the magistrate has ruled.”) (quoting McKeever, 932 F.2d at 798). The June Order expressly notified plaintiff that (1) the June Order constituted non-dispositive rulings on pretrial matters; (2) to the extent a party disagreed with such non-dispositive rulings, such party may seek review from the District Judge within fourteen (14) days; (3) to the extent a party believed that the rulings were dispositive, rather than non-dispositive, such party had the right to object to the determination that the rulings were non-dispositive within fourteen (14) days; and (4) a party would be foreclosed from challenging the rulings in the June Order if such party did not seek review thereof or object thereto. (June Order at 12 n.7).

1 intent to stand on the Complaint.³ The June Order expressly cautioned plaintiff that
2 the failure timely to file a first amended complaint, a notice of dismissal, or a notice
3 of intent to stand on the Complaint may be deemed plaintiff's admission that
4 amendment is futile and may result in the dismissal of this action on the grounds set
5 forth in the June Order, on the ground that amendment is futile, for failure diligently
6 to prosecute, and/or for failure to comply with the June Order. (Docket No. 10).

7 On August 31, 2022, the Magistrate Judge granted plaintiff's application for
8 an extension of time and extended his deadline to comply with the June Order to
9 September 30, 2022 ("August Order"). (Docket No. 12). The August Order
10 expressly cautioned plaintiff that absent a further extension of time, his failure to
11 file a first amended complaint, a notice of dismissal, or a notice of intent to stand on
12 the Complaint by the foregoing extended deadline may be deemed plaintiff's
13 admission that amendment is futile and may result in the dismissal of this action
14 with or without prejudice on the grounds set forth in the June Order, on the ground
15 that amendment is futile, for failure diligently to prosecute, and/or for failure to
16 comply with the August Order. (Docket No. 12).

17 The September 30, 2022 extended deadline to comply with the June Order
18 expired without any action by plaintiff. Plaintiff has not sought a further extension
19 of time to comply with the June Order, has not sought review of, or filed any
20 objection to the June or August Orders and has not otherwise communicated with
21 the Court since early August 2022.

22
23 As discussed below, this action is dismissed due to plaintiff's unreasonable
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25 ³Specifically, the Magistrate Judge advised plaintiff, albeit in greater detail and with
26 citation to authorities, that the Complaint, among other deficiencies, violated Rules 8 and 10(b)
27 of the Federal Rules of Civil Procedure, was largely incoherent and apparently frivolous, and
28 failed to demonstrate a constitutional violation based on allegations that plaintiff had been placed
in shackles or other restraints while being transported to and from court, and that it appeared that
defendants Moore and Fultz would be immune from any claims for damages

1 failure to prosecute and his failure to comply with the June and August Orders.

2 **II. PERTINENT LAW**

3 It is well-established that a district court may *sua sponte* dismiss an action
4 where the plaintiff has failed to comply with a court order and/or unreasonably
5 failed to prosecute. See Link v. Wabash Railroad Co., 370 U.S. 626, 629-33
6 (1962); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.) (as amended), cert.
7 denied, 506 U.S. 915 (1992); see also McKeever v. Block, 932 F.2d 795, 797 (9th
8 Cir. 1991) (district court may *sua sponte* dismiss action “only for an unreasonable
9 failure to prosecute”) (citations omitted); see also Edwards v. Marin Park, Inc., 356
10 F.3d 1058, 1065 (9th Cir. 2004) (*sua sponte* dismissal pursuant to Fed. R. Civ. P.
11 41(b) proper sanction in cases where a plaintiff is notified of deficiencies in
12 complaint and is given “the opportunity to amend [the complaint] or be dismissed”
13 but the plaintiff “[does] *nothing*”) (citations omitted; emphasis in original).

14 In determining whether to dismiss an action for failure to prosecute or failure
15 to comply with court orders, a district court must consider several factors, namely
16 (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need
17 to manage its docket; (3) the risk of prejudice to defendants; (4) the public policy
18 favoring disposition of cases on their merits; and (5) the availability of less drastic
19 alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to
20 prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court orders).
21 Dismissal is appropriate under the foregoing analysis “where at least four factors
22 support dismissal . . . or where at least three factors ‘strongly’ support dismissal.”
23 Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (citations
24 omitted).

25 Where a plaintiff is proceeding *pro se*, however, the court must first notify
26 the plaintiff of the deficiencies in the complaint so that the plaintiff has an
27 opportunity “to amend effectively.” Ferdik, 963 F.2d at 1261 (citation omitted). In
28 addition, where a Magistrate Judge originally dismissed the complaint with leave to

1 amend, the District Judge must review that decision before dismissing the entire
2 action. See McKeever, 932 F.2d at 797 (“While the magistrate can dismiss
3 complaints with leave to amend, the district court necessarily must review that
4 decision before dismissing the entire action.”). A district judge may not dismiss an
5 action for failure to comply with a court order (*e.g.*, the Magistrate Judge’s order to
6 file an amended complaint) or for unreasonable failure to prosecute if the initial
7 decision to dismiss a complaint was erroneous. Yourish v. California Amplifier,
8 191 F.3d 983, 992 (9th Cir. 1999) (citing *id.*).

9 **III. DISCUSSION AND ORDER**

10 First, the Court has reviewed the June Order and finds that it adequately and
11 properly notified plaintiff of the deficiencies in the Complaint and – together with
12 the August Order – afforded plaintiff an opportunity to amend effectively. This
13 Court agrees with and adopts the June and August Orders, and finds that the
14 Magistrate Judge properly dismissed the Complaint with leave to amend for the
15 reasons discussed in the June Order.

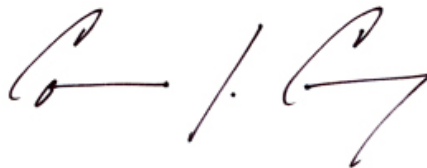
16 Second, dismissal is appropriate based upon plaintiff’s failure to comply with
17 the June Order by the extended deadline set in the August Order, and the failure to
18 prosecute. The Court has considered the five factors discussed above – the public’s
19 interest in expeditious resolution of litigation, the court’s need to manage its docket,
20 the risk of prejudice to defendants, the public policy favoring disposition of cases
21 on their merits, and the availability of less drastic alternatives. The first two factors
22 – the public’s interest in expeditiously resolving this litigation and the Court’s
23 interest in managing the docket – strongly weigh in favor of dismissal. As noted
24 above, plaintiff has been notified of the deficiencies in the Complaint and has been
25 given the opportunity to amend it, to dismiss it, or to notify the Court that he wishes
26 to stand thereon. Aside from seeking a single extension of time which expired
27 months ago, he has done nothing. See Edwards, 356 F.3d at 1065. The third factor,
28 risk of prejudice to defendants, also weighs strongly in favor of dismissal. See

1 Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir. 1976) (prejudice to
2 defendants presumed from unreasonable delay) (citation omitted). The fourth
3 factor, the public policy favoring disposition of cases on their merits, is greatly
4 outweighed by the factors in favor of dismissal discussed herein. As for the fifth
5 factor, since plaintiff has already been cautioned of the consequences of his failure
6 to prosecute and his failure to comply with the June Order by the extended deadline
7 set in the August Order, and plaintiff has been afforded the opportunity to avoid
8 such consequences but has not responded, no sanction lesser than dismissal is
9 feasible. See, e.g., Yourish, 191 F.3d at 989 (dismissal of action *with prejudice* not
10 excessive sanction for plaintiffs' failure timely to comply with court's order to
11 submit an amended complaint).

12 IT IS THEREFORE ORDERED that this action is dismissed based upon
13 plaintiff's unreasonable failure to prosecute and his failure to comply with the June
14 and August Orders.

15 IT IS SO ORDERED.

16 DATED: December 28, 2022

A handwritten signature in black ink, appearing to read 'C. J. Carney', is written above a horizontal line.

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18
19 HONORABLE CORMAC J. CARNEY
20 UNITED STATES DISTRICT JUDGE
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